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FIVE YEARS OF RAILROAD REGULATION BY THE STATES

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In 1902, the Interstate Commerce Commission, in an exhaustive report, tabulated the laws which the state legislatures for twenty years past, had enacted for the control of their common carriers. Since then, five legislative years have passed, and at no other time of equal length in the history of state railroad control, have the commonwealth legislatures enacted more railroad laws than during the last half of this period. In half a decade, over eight hundred separate provisions were enacted to regulate the common carriers engaged in intra-state traffic.

For purposes of analysis, the chief provisions may be classified into six groups: (1) The newly created commissions; (2) Amendments to older commission laws; (3) Freight rate and passenger fare acts; (4) Acts designed to regulate the service of public carriers; (5) Corporate affairs, and (6) Public safety.

(1) *Newly Created Commissions*.—While in 1902 there were thirty-one state¹ railroad commissions, at present there are thirty-nine. As seven of the old commissions,² however, were displaced by bodies vitally different, it is permissible to say that during the last five years fifteen new commissions were created.

For purposes of comparison these newly created commissions may be divided into four groups. First, and most numerous, are those whose rate fixing authority, consists of the power to revise rates as distinct from the power to make complete schedules. The commissions of Wisconsin, Ohio, Colorado, Michigan, Nevada, New York, Oregon, and Vermont, are of this type. In these states, the work of making the complete schedule of rates for the intra-state traffic

¹Including Virginia Corporation Commission, created by constitution in 1902, but not appointed until 1903.

²The commissions of Wisconsin, Ohio, Colorado and Michigan consisted of but one commissioner; those of New York, Alabama and Vermont were displaced by new commissions.

remains in the hands of the railroad traffic agents. If, however, a shipper, an agricultural, trade or manufacturing organization, a municipality or other corporation, as designated in the various statutes, makes a complaint to the commission that a particular rate or specified rates are unjustly high or discriminatory, the commission investigates the matter, calls witnesses, has experts examine the railroad's accounts and holds formal hearings. If it finds the complaint well-founded, it orders the railroad to substitute, for the particular rate complained of, rates which the commission considers reasonable. Commissions of this type may issue mandatory orders^a only upon complaint, and after hearings have been held, they may investigate any rate upon their own initiative, but in that case may merely recommend. Their duty is not to make schedule of rates, but to correct whatever flaws may be found on the schedules as made by the railroads.

TABLE I.
ORGANIZATION AND SCOPE OF THE COMMISSIONS

| STATE. | Year. | How chosen. | Term years | No. | Power to fix rates. | Classification. | Joint rates. | Express cars. | Private cars. | Industrial R. R. |
|----------------|-------|-------------|------------|-------|---------------------|-----------------|--------------|---------------|---------------|------------------|
| Indiana | 1905 | App. | 4 | 3 | Yes | Yes | Yes | Yes | Yes | ..... |
| Washington .. | 1905 | App. | 6 | 3 | Yes | Yes | Yes | Yes | ..... | ..... |
| Wisconsin..... | 1905 | App. | 6 | 3 | Yes | Yes | Yes | Yes | Yes | Yes |
| Ohio..... | 1906 | App. | 6 | 3 | Yes | Yes | Yes | Yes | Yes | Yes |
| Colorado..... | 1907 | Elec. | 6 | 3 | Yes | Yes | Yes | Yes | Yes | Yes |
| Michigan..... | 1907 | App. | 6 | 3 | Yes | Yes | Yes | Yes | Yes | Yes |
| Montana..... | 1907 | Elec. | 4 | 3 | Yes | Yes | Yes | Yes | Yes | ..... |
| Nebraska..... | 1907 | Elec. | 6 | 3 | Yes | Yes | Yes | Yes | Yes | ..... |
| Nevada..... | 1907 | App. | 3 | 3 | Yes | Yes | Yes | Yes | Yes | Yes |
| New York..... | 1907 | App. | 5 | 5 & 5 | Yes | Yes | Yes | Yes | Yes | Yes |
| Oregon..... | 1907 | Elec. | 4 | 3 | Yes | Yes | Yes | Yes | Yes | Yes |
| New Jersey.... | 1907 | App. | 6 | 3 | No | No | No | ..... | ..... | ..... |
| Pennsylvania.. | 1907 | App. | 5 | 3 | No | No | No | Yes | Yes | ..... |
| Alabama..... | 1907 | Elec. | 4 | 3 | Yes | Yes | Yes | Yes | Yes | Yes |
| Vermont..... | 1907 | App. | 6 | 3 | Yes | ..... | ..... | Yes | Yes | Yes |

The second type of the newly created commissions includes those which have the power to make complete rate schedules for all purely state traffic. Washington, Indiana, Montana, Nebraska and Alabama have granted this power to their respective commissions and made it their duty. In making the initial rate schedules these commissions exercise far more drastic powers than those of the first type, for they act upon their own initiative and make schedules instead of corrections. After their schedules are inaugurated,

^aWisconsin commission may investigate, call hearings and issue orders upon its own motion.

complaints may be brought as in the case of the commissions which merely revise rates, and the railroads may likewise make complaints. The order of procedure is then similar to that above explained, with the one marked difference *i. e.*, the complaint in the eight states of the first type is usually against rates made by the railroad freight agent, while in these states, it is against rates made by the commission.

The third type consists of the so-called "weak commissions,"—those which do not have the power to fix rates. In 1902, ten, or one-third of the state commissions were still of this character, but of the fifteen newly created commissions, but two, those of Pennsylvania and New Jersey, are "weak." The Pennsylvania commission investigates rates, makes its findings public and recommends certain charges to the carriers. If its recommendations are not voluntarily accepted, the commission has no mandatory power; it brings the matter before the Secretary of Internal Affairs, and the Attorney General, "for their action according to law, as the public interests may require, and reports the same in detail in its next succeeding report to the governor."⁴ The New Jersey Commission of 1907,⁵ likewise, can merely investigate and recommend as regards rates and the other important matters of railroad operation; it can issue orders only as regards the safety of tracks, roadbeds, tunnels, bridges and equipment, and the adequacy of transportation facilities and stations.

The last group of commissions forms a distinct type, not because of their rate-making power, but, because of the scope of their jurisdiction. They are "Public Utility Commissions," and include those of New York and Wisconsin.⁶ In addition to the usual common carriers, controlled by railroad commissions, the New York Public Service Commission has jurisdiction over all street railways, and over the manufacture, sale and distribution of gas and electricity for light, heat and power.⁷ The state is divided into two districts and in each there is a public utility commission consisting of five members. The Wisconsin Railroad Commission, was in 1907, given jurisdiction over an even wider range of public utilities. In addition to common carriers, street car and telegraph companies, tele-

⁴Pennsylvania, Act of May, 1907, No. 250, Sec. 17.

⁵New Jersey, Laws of 1907, Ch. 197.

⁶Wisconsin Railroad Commission (1905) obtained charge of public utilities in 1907, Sec. 1797, M 1 to 108.

⁷Laws of New York, Ch. 429.

phone companies and light, heat, water and power plants were placed within its jurisdiction.

In the four types of commissions here distinguished, there are certain *common powers and tendencies* clearly discernable. The powers of greatest importance are those with respect to *rates*. There is a decided tendency in the direction of granting to the commissions the authority to make rates, thirteen of the new commissions being armed with rate-making powers. The particular form of this rate-making power manifests a tendency toward rate revision as contrasted with the making of schedules, eight of the commissions having the former, and five the latter authority. The tendency, moreover, is toward the fixing of absolute rates, but two of the commissions, those of Montana and New York, being definitely limited to the making of maximum rates.⁸ Lastly, the tendency in rate-fixing, is to make it all inclusive. Twelve of the thirteen mandatory commission laws expressly include the power to fix joint rates and classifications.⁹

A second marked tendency is to give to the commissions wide *administrative powers over the service* of common carriers. Each of the fifteen recently created commissions is entrusted with the important duty of supervising the distribution of cars, and all but the Pennsylvania commission may issue mandatory orders to provide for reasonable distribution. Train service, stations and terminals, and, as is stated in the typical Wisconsin statute, "any regulation or practice, whatsoever, affecting the transportation of persons or property" are controlled by the commissions in the same way as are rates.

A third group of powers generally vested in the new commissions is the control¹⁰ of matters pertaining to *public safety*. They supervise the trackage and roadbed, grade crossings, signals, interlocking plants and all other safety devices, and issue orders, when necessary for the safety of the public or the railway employees.

The fourth tendency is to grant *financial powers* to the commissions. In New York, Wisconsin, Washington and Oregon, the commissions have the power to prescribe a system of uniform accounts, with the injunction in the New York statute, that it "shall conform as near as may be to those from time to time,

⁸Laws of Montana, 1907, Sec. 13; Laws of New York, Ch. 429.

⁹See Table I.

¹⁰Not mandatory in Pennsylvania.

established and prescribed by the Interstate Commerce Commission."¹¹ In New York, Oregon and Vermont, the commissions have control over the issue of stocks and bonds. All of them have the power to investigate the financial condition of all carriers within their jurisdiction.

The *judicial and executive powers* of the new commissions consist chiefly of the power¹² to try cases, hear and investigate complaints, summon and examine witnesses, issue subpoenas, administer oaths, require the production of books and papers, take depositions, "make findings, decisions or recommendations, determine their own procedure, and use a seal."

In the sixth place, there is a marked tendency to increase and concretely define the *extent of the commission's jurisdiction*. As was true of the older commissions, all the newer statutes grant to them the control over common carriers. But the recent¹³ statutes stipulate what is included under the term "common carrier." Fourteen of the fifteen laws definitely include express companies;¹⁴ thirteen especially stipulate private car companies and fast freight lines; and nine make special mention of industrial railroads. In twelve of the new commission laws, special mention is made of inter-urban street railways;¹⁵ and in Indiana, Nebraska, New York, Wisconsin and Pennsylvania, their jurisdiction extends to street railways¹⁶ operating within cities. The Pennsylvania Commission, furthermore, has jurisdiction over navigation companies, pipe lines, and telegraph and telephone companies.

In New York and Wisconsin, this tendency is carried to the extent of giving the commissions charge of most public utilities. The Georgia commission was, in 1907, reorganized so as to approach closely the scope of a public utilities commission, and similar attempts, in 1908, were made in Ohio and New Jersey. Shortly before the beginning of the five years here under consideration, this tendency was given its start in the "Corporation Commissions"^{16a} of Virginia and North Carolina.

¹¹Laws of New York (1907), Ch. 429, Sec. 52.

¹²Proceedings of Eighteenth Annual Convention of National Association of Railway Commissioners, p. 157.

¹³The New Jersey Statute, 1907, Ch. 197, is indefinite in this respect.

¹⁴See Table I.

¹⁵In all but Washington, Montana and New Jersey.

¹⁶Vermont statute extends to "all railroads within this state, whether operated by steam, electricity, or any other power."

^{16a}The Oklahoma constitution provides for a corporation commission, but it is not yet created.

Lastly, there are definite tendencies in the organization of the new commissions. The movement is away from the single commissioner to a commission of three or more. Fourteen of the commissions consist of three members, and New York's statute provides for two commissions, each consisting of five members. The movement is also toward a long tenure of office,¹⁷ eight of the statutes providing for a six-year term, two for five years, four prescribe a four-year term, and but one clings to a term of three years. Contrary to what the tendency was in 1902, ten of the new commissions are appointive and five elective.

In all, the new commission statutes there are provisions designed to make effective the work of the commissions. A penalty ranging from a maximum of not over \$500 for each offense in Washington and Montana, to one of from \$100 to \$10,000, for each offense assessable against the railroad and its agents and employees in Wisconsin, Ohio, Nevada and Oregon is provided for in case an order of the commission is violated. In Michigan the penalty is \$500 per week; in New York it is not over \$5,000 per day. Eleven of the commission statutes compel the carriers to publish their rates and file them with the commissions;¹⁸ eight expressly state that none but published rates are lawful; and eleven provide that no rate may be changed without a notice of from ten to thirty days. Twelve provide for stringent penalties against unjust discriminations and secret rebates. All the statutes creating "strong" commissions have provisions with reference to court appeals: Ten¹⁹ of them provide that in case of appeal, the orders of the commission shall be *prima facie* reasonable, and that the burden of proof shall be upon the carrier; all the laws except that of New York, provide for a notice and hearings before their orders are suspended by injunction; the Colorado law specifies that the commission's order may not be temporarily suspended for more than ninety days; in Montana and Nevada, the commission's orders remain in force during the court appeal; in Alabama, Oregon, Washington and Indiana, a bond must be posted by the carrier before an order may be suspended so as to test its validity in a court; and in New York, the carriers may appeal to the courts only on the constitutional grounds of confiscation of property without due process of law.

¹⁷See Table I.

¹⁸See Table I.

¹⁹Indiana, Washington, Wisconsin, Ohio, Michigan, Montana, Nebraska, Nevada, Oregon, Alabama.

(2) *Amendments to Older Commission Laws.*—In addition to the creation of new commissions, many changes were made in the powers, duties and organization of commissions which had been previously established. Contrary to the tendency toward the appointive commission, above noted, two of the older commissions, those of Kansas²⁰ and Georgia, were changed from the appointive to the elective type, and in the case of the former, the term of office was reduced from three to two years. In other respects, however, the amendments have been largely in conformity with established movements.

The term of office in Iowa²¹ was increased from three to four years, the salaries of the commissioners in Massachusetts²² and Kentucky were advanced, and the Georgia commission was enlarged to a membership of five. In five states the scope²³ of the commissions was increased. Steamships were brought within the Massachusetts statute; express companies within that of Iowa; sleeping car companies within that of Arkansas; electric railways, express and sleeping car companies were brought within the jurisdiction of the Kansas commission, and pipe lines within that of the Louisiana commission.

The Georgia commission was changed into a public utilities commission, when it was given jurisdiction over street railways, telegraph and telephone companies operating beyond the limits of a city, town or country, over public docks and wharves, terminals and terminal stations, public gas light and electric light and power companies.

The Texas, Maine and Kansas commissions were given control over sidetracks,²⁴ and spurs; those of Virginia and North Carolina, over demurrage and car service;²⁵ Georgia²⁶ over the forwarding of freight; Missouri,²⁷ over train service; and North Carolina, South Carolina and Kansas over stations.²⁸ Many commissions were

²⁰Kansas, 1903, C. 391; Georgia, 1906, p. 100.

²¹Iowa, 1906, C. 38.

²²Massachusetts, 1906, C. 417, from \$5,000 to \$6,000; Kentucky, 1906, C. 85, from \$2,000 to \$3,000 and \$3,600.

²³Massachusetts, 1903, C. 173; Iowa, 1907; Arkansas, 1907, Act 193; Kansas, 1907; Louisiana, 1906, No. 36.

²⁴Texas, 1903, C. 99; Maine, 1907; Kansas, 1905, C. 351.

²⁵Virginia, 1903, C. 260; North Carolina, 1903, C. 342.

²⁶Georgia, 1905, p. 120.

²⁷Missouri, 1905, p. 104, 108.

²⁸North Carolina, 1903, C. 126; South Carolina, 1906, C. 8; Kansas, 1907, C. 267.

given control over public safety devices,²⁹ and in four³⁰ states laws were passed obliging carriers to report all accidents to the commissions. The Alabama and Missouri commissions³¹ were, in 1903, changed from the "weak" to the "strong" type. The Iowa and Arkansas commissions were given the power to fix joint rates. The Virginia³² commission was, in 1906, burdened with the duty of making a schedule of passenger fares; and in 1907 the South Dakota commission³³ was instructed to determine the value of the intrastate railroads with a view to making a rate schedule.

Finally, three of the older commissions were given greater financial powers. The New Hampshire³⁴ commission was given the same control over the stocks of a holding company as it previously had over railroad stock issues; the Georgia^{34a} commission was given control over the issue of stocks and bonds; and the Minnesota³⁵ commission was given the highly important power of fixing a uniform system of accounts.

(3) *Freight Rate and Passenger Fare Acts.*—There is a well-defined difference in railroad legislation, between regulation through a commission and regulation by statute. Many statutes, enacted during the last five years were intended primarily as aids to the commissions, and in statutes of this type there is nothing anomalous. As is indicated in the accompanying table, seventeen states enacted laws prohibiting unjust discriminations and rebates. Those passed since the enactment of the Elkin's Law of 1903, and the Interstate Commerce Act of 1906, are modeled after the Federal statutes, and usually provide that the penalty is assessable with equal force against the shipper who accepts a rebate and the carrier who pays it. Ten states, likewise, passed statutes, doubtless based upon the federal acts, providing that only the published rates are lawful. A conviction of rebating in these states, therefore, does not necessitate the comparison of rates paid by competing shippers, but merely evidence that the actual rate paid was different from the published

²⁹New Hampshire, 1903, C. 88; Minnesota, 1905, C. 176, 1907; Massachusetts, 1906, C. 417; Illinois, 1905, C. 350.

³⁰South Carolina, C. 419; Minnesota, 1905, C. 122; Iowa, 1905, C. 131; North Dakota, 1907, C. 205.

³¹Alabama, 1903, p. 95; Missouri, 1903, p. 132.

³²Virginia, 1906, C. 256.

³³South Dakota, 1907, C. 213.

³⁴New Hampshire, 1903, C. 55.

^{34a}Georgia, 1907, No. 223.

³⁵Minnesota, 1907.

rate. Similarly, provision was made in a dozen states that no rate may be changed without notice of a specified number of days—ten days in eight states and thirty days in four.

A similar group of statutes consists of the so-called anti-pass laws. Fourteen states, Alabama, Iowa, Kansas, Minnesota, Michigan, Nebraska, Oregon, Texas, Vermont, Ohio, Indiana, South Dakota, Oklahoma and New York, enacted provisions much like those in the Hepburn Act, prohibiting the granting of all passes, except to railway officials, agents, employees and their families and certain other persons specifically excepted. Six states, Georgia, Wisconsin, New Hampshire, South Carolina, Nevada and West Virginia, prohibited the giving of passes to certain public officials, or members of the judiciary, in order to eliminate bribery, and Texas and Iowa enacted similar anti-pass provisions before the adoption of the more sweeping statutes. New Jersey, in 1907, attempted to accomplish this same end by compelling the railways to grant free transportation to a large number of public officials, and a similar provision, embodied in a constitutional amendment, was submitted to the voters of Missouri, but was rejected.

Rate statutes of this type are but complementary to the control of rates through a commission. In many states, however, the legislatures fixed maximum freight rates and passenger fares by statute, and thereby violated the saner principle of rate control through expert commissions, which they apparently accepted when they vested such commissions with rate-making powers. It is a curious fact that, side by side with the creation of fifteen new commissions and the granting of increased powers to many of the older commissioners, twenty-two states, during the last five years, enacted statutes fixing the maximum *passenger fare* which may be charged between points within their boundaries.³⁶ Eleven³⁷ state legislatures fixed the arbitrary maximum fare of two cents per mile; the statutory maximum in Iowa and Michigan is graded from two to three cents; that of Virginia, from two to three and one-half cents; that of Alabama and North Dakota is fixed at two and one-half cents; North Carolina, at two and one-quarter; and that of Kansas, Montana, South Carolina and Washington, at three cents per mile.

³⁶See Table II.

³⁷The Missouri and Mississippi two-cent fare not applicable to very small roads.

[illegible]

TABLE II.—STATE RAILROAD STATUTES OTHER THAN THOSE CREAT

| Notice Before Rate Changes (days). | Published Rates Alone Lawful. | Maximum Passenger Fares (cents). ² | Mileage Books. ³ | Anti-Pass Laws. ⁴ | Car Service. ⁵ | Stations and Terminals. ⁶ | Trains. |
|--|----------------------------------|---|-----------------------------|------------------------------|--|--|--------------|
| 10 | 1907, No. 69 | .02½† | 1907, No. 69 | 1907, No. 69 | 1907, No. 69 | 1907, No. 69 | ..... |
| | | .02 | | | 1907, No. 193 | 1905, c. 194 1907, No. 148 | 1907 |
| | | | | | | | 1905 |
| 30 | | | | | 1907, c. 208 | | |
| | | | | | 1903, c. 108 | | |
| | | | | 1904, p. 72 | 1905, Sec. 2 1907, No. 219 | 1903, p. 36 1906, p. 101 | ..... |
| | | .02 | | | | | |
| 10 | 1907, c. 241 | .02 | | 1903, c. 59 1907, c. 241 | 1907, c. 241, 231 | 1907, c. 241 | 1903 1907 |
| | | .02-.03 | | 1906, c. 90 1907, c. 112 | | | |
| | | .03 | 1907, c. 272 | 1907, c. 273 | 1905, c. 345 1907, c. 275, 279 | 1907, c. 286 | ..... |
| | | | | | | | 1905 |
| | | | | | | 1904, c. 357 | |
| 10 | 1907, No. 312 | .02-.03 | | 1907, No. 312 | 1907, No. 312 | | 1907 |
| | | .02 | 1905, c. 221 | 1907, c. 449 | 1903, c. 320 1907, c. 23 | 1903, c. 147 1905, c. 208 1907, c. 54 | 1905 1907 |
| | | .02* | | | 1905, p. 109 1907, Sec. 1075 1907, No. 320 | 1903, Sec. 1164-5 1905, p. 107 1907, No. 438 | 1905 1907 |
| | | .03 | | | 1907 c. 37 | 1905, c. 26 1907, c. 182 | 1903 1907 |
| 10 | 1907, Sec. 8 | .02 | 1907, c. 94 | 1907, c. 93 | 1905, c. 105 | 1905, c. 108 1907, c. 8 | ..... |
| 30 | 1907, c. 44 | | | 1907, c. 44 | 1907, c. 44 | 1907, c. 44 | 1907 |
| | | | | | 1907, c. 197 | 1907, c. 197 | 1907 |
| 30 | 1907, c. 429 | | | 1907, c. 429 | 1907, c. 429 | 1907, c. 429 | 1907 |
| | | .02½* | 1907, c. 216 | | 1903, c. 342 1905, c. 545 1907, Sec. 2 | 1903, c. 126 1907, c. 210, 465 | 1903 |
| | | .02½* | 1907, c. 199 | | 1903, c. 145 1907, c. 200 | 1903, c. 147 1907, c. 210 | 1905 1907 |
| 10 | 1906, c. 244 | .02 | | 1906, c. 244 | | 1906, c. 244 | ..... |
| 10 | 1907, c. 53 | | | 1907, c. 53 | 1907, c. 53 | 1907, c. 53 | 1905 1907 |

| Mar Service. ⁵ | Stations and Terminals. ⁶ | Train Service and Connections. ⁷ | Livestock Service. ⁸ | Industrial Tracks. ⁹ | Grade Crossings. ¹⁰ |
|--------------------------------|--|---|---|---------------------------------|---|
| No. 69 | 1907, No. 69 | ..... | 1907, No. 69 | 1907, No. 69 | 1907, No. 69 |
| No. 193 | 1905, c. 194 1907, No. 148 | 1907, No. 149, 338 | ..... | ..... | 1905, c. 36 |
| ..... | ..... | 1905, c. 423 | 1905, c. 512 | 1905, c. 548 | 1905, c. 124 |
| c. 208 | ..... | ..... | ..... | 1907, c. 208 | ..... |
| c. 108 | ..... | ..... | 1905, c. 51 | 1903, c. 109 | 1903, c. 111 |
| Sec. 2 No. 219 | 1903, p. 36 1906, p. 101 | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | 1906, 1907, c. 211 |
| c. 241, 231 | 1907, c. 241 | 1903, c. 22 1907, c. 241 | ..... | 1907, c. 241 | 1903, c. 59 1907, c. 241 |
| ..... | ..... | ..... | 1904, c. 76 1907, c. 115 | ..... | ..... |
| c. 345 c. 275, 279 | 1907, c. 286 | ..... | 1904, c. 76 1905, c. 354, 346 1907, c. 276, 279 | 1905, c. 350 | 1903, c. 488 |
| ..... | ..... | 1905, c. 127 | ..... | 1905, c. 127 1907, c. 92 | 1905, c. 94 |
| ..... | 1904, c. 357 | ..... | ..... | ..... | 1905, c. 128, 408 |
| No 312 | ..... | 1907, No. 312 | ..... | 1907, No. 312 | 1905, No. 127 1907, No. 312 |
| c. 320 c. 23 | 1903, c. 147 1905, c. 208 1907, c. 54 | 1905, c. 287 1907, c. 27 | 1907, c. 333 | ..... | 1905, c. 280 |
| p. 109 Sec. 1075 No. 320 | 1903, Sec. 1164-5 1905, p. 107 1907, No. 438 | 1905, p. 10 1907, No. 282 | 1907, No. 149 | ..... | 1905, p. 106 |
| c. 37 | 1905, c. 26 1907, c. 182 | 1903, c. 65 1907, c. 37 | 1907, c. 51 | ..... | 1903, c. 8 1907, c. 43 |
| c. 105 | 1905, c. 108 1907, c. 8 | ..... | 1905, c. 106, 107, 5 | 1905, c. 105 1907, c. 89 | ..... |
| c. 44 | 1907, c. 44 | 1907, c. 44 | ..... | 1907, c. 44 | 1907, c. 44 |
| c. 197 | 1907, c. 197 | 1907, c. 197 | ..... | ..... | 1903, c. 257 1904, c. 209 1906, c. 301 |
| c. 429 | 1907, c. 429 | 1907, c. 429 | ..... | 1907, c. 429 | 1906, c. 109 1907, c. 429, 578 |
| c. 342 c. 545 Sec. 2 | 1903, c. 126 1907, c. 210, 465 | 1903, c. 444, 693 | ..... | ..... | ..... |
| c. 145 c. 200 | 1903, c. 147 1907, c. 210 | 1905, c. 152 1907, c. 201 | 1903, c. 144 1907, c. 209 | ..... | 1903, c. 148, 301, 548 1905, c. 150 |
| ..... | 1906, c. 244 | ..... | ..... | 1906, c. 244 | 1904, p. 537 1905, c. 206, 232 1906, c. 247 1906, p. 191 |
| c. 53 | 1907, c. 53 | 1905, c. 225 1907, c. 53 | 1907, c. 53 | 1903, c. 101 1907, c. 53 | 1907, c. 53 |

| Industrial Tracks. ⁹ | Grade Crossings. ¹⁰ | Limited Hours. ¹¹ | Public Safety. ¹² | Express Service. ¹³ | Corporate Affairs. ¹⁴ |
|---------------------------------|---|------------------------------|---|--------------------------------|--|
| 1907, No. 69 | 1907, No. 69 | ..... | 1903, p. 162 | 1907, No. 69 | ..... |
| ..... | 1905, c. 36 | 1907, No. 282 | 1907, No. 402 | 1905, c. 250 | 1905, c. 163, 268 1907, No. 89 |
| 1905, c. 548 | 1905, c. 124 | ..... | 1905, c. 573, 494, 495, 496 | ..... | 1903, c. 204, 45 1905, c. 425, 423 1907. |
| 1907, c. 208 | ..... | ..... | 1903, c. 98, 154, 133 | 1907, c. 208 | 1905, c. 129 |
| 1903, c. 109 | 1903, c. 111 | ..... | 1903, c. 109 | 1905, c. 50 | 1905, c. 224 |
| ..... | ..... | ..... | 1905, p. 86 | ..... | ..... |
| ..... | 1906, 1907, c. 211 | ..... | 1905, p. 349, 350 | ..... | 1903, c. 290 |
| 1907, c. 241 | 1903, c. 59 1907, c. 241 | 1907, c. 131 | 1903, c. 120 1907, c. 118, 241 | 1905, c. 53 | 1903, c. 119, 121 |
| ..... | ..... | 1907, c. 103 | 1907, c. 110 | 1907, c. 116 | ..... |
| 1905, c. 350 | 1903, c. 488 | 1905, c. 342 1907, c. 280 | ..... | ..... | 1903, c. 392 1905, c. 344 |
| 1905, c. 127 1907, c. 92 | 1905, c. 94 | ..... | 1903, c. 17 | ..... | 1903, c. 23, 93 1903, c. 146 |
| ..... | 1905, c. 128, 408 | ..... | 1906, p. 75 1906, p. 267, 283 1907, c. 392 | 1906, c. 266 | 1903, c. 126 1904, c. 169 1906, c. 463 1907, c. 585 |
| 1907, No. 312 | 1905, No. 127 1907, No. 312 | ..... | 1907, No. 234, 312 | 1907, No. 312 | 1905, c. 156 |
| ..... | 1905, c. 280 | 1907, c. 253 | 1903, c. 262 1905, c. 122 1905, c. 280 1907, c. 202, 276 | ..... | 1903, c. 86 1907, c. 395 |
| ..... | 1905, p. 106 | 1905, p. 112 | 1907, No. 152 1907, No. 131 | ..... | 1903, c. 130, 129 1903, c. 126, |
| ..... | 1903, c. 8 1907, c. 43 | 1907, c. 5 | 1903, c. 101 1905, c. 24 1907, c. 37 | 1907, c. 37 | ..... |
| 1905, c. 105 1907, c. 89 | ..... | ..... | 1907, c. 90 | 1907, c. 90 | 1903, c. 28 1905, c. 40 |
| 1907, c. 44 | 1907, c. 44 | ..... | 1907, c. 44 | 1907, c. 44 | 1905, c. 93, 144, 146 |
| ..... | 1903, c. 257 1904, c. 209 1906, c. 301 | ..... | 1907, c. 197 | ..... | 1903, c. 257 1906, c. 141 |
| 1907, c. 429 | 1906, c. 109 1907, c. 429, 578 | 1907, c. 523, 627 | 1906, c. 380 1907, c. 429 | 1907, c. 429 | 1903, c. 515 1904, c. 228 1905, c. 727 1907, c. 429 |
| ..... | ..... | 1907, c. 456 | 1903, c. 552 1905, c. 335 1907 c. 330 | ..... | 1905, c. 187 1907, c. 466, 472 |
| ..... | 1903, c. 148, 301, 548 1905, c. 150 | 1907, c. 207 | 1907, c. 205 | ..... | 1907, c. 53 |
| 1906, c. 244 | 1904, p. 537 1905, c. 206, 232 1906, c. 247 1906, p. 191 | ..... | 1904, p. 615 1905, c. 244, 247 | 1906, c. 244 | 1904, p. 570 |
| 1903, c. 101 1907, c. 53 | 1907, c. 53 | ..... | 1905, c. 41 1907, c. 53 | 1907, c. 53 | ..... |

| | | | | | | | |
|-----------------|--|------------------------------|--------------------|-------|---------------|----------|-------|
| Michigan..... | ..... | 1907, No. 312 | 1907, No. 312 | 10 | 1907, No. 312 | .02-.03 | ..... |
| Minnesota..... | 1907,* c. 232 | 1905, c. 177 | 1905, c. 177 | ..... | ..... | .02 | 1905 |
| Missouri | 1905, p. 102 1907, No. 28 1907, No. 469, 289 | ..... | ..... | ..... | ..... | .02* | ..... |
| Montana..... | ..... | 1907, c. 37 | 1907, c. 37 | ..... | ..... | .03 | ..... |
| Nebraska..... | 1907, c. 95 | 1907, c. 90 | 1907, c. 90 | 10 | 1907, Sec. 8 | .02 | 1907 |
| Nevada..... | 1907, c. 44 | 1907, c. 44 | 1907, c. 44 | 30 | 1907, c. 44 | ..... | ..... |
| New Jersey.... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| New York..... | ..... | 1907, c. 429 | 1907, c. 429 | 30 | 1907, c. 429 | ..... | ..... |
| North Carolina. | 1907, c. 217 | 1903, c. 590 1907, c. 217 | 1907, c. 217 | ..... | ..... | .02½* | 1907 |
| North Dakota.. | 1903, c. 146 1907, c. 51 | ..... | ..... | ..... | ..... | .02½* | 1907 |
| Ohio..... | ..... | 1906, c. 244 | 1906, c. 244 | 10 | 1906, c. 244 | .02 | ..... |
| Oregon..... | ..... | 1907, c. 53 | 1907, c. 53 | 10 | 1907, c. 53 | ..... | ..... |
| Pennsylvania .. | ..... | ..... | ..... | ..... | ..... | .02 | ..... |
| South Carolina. | 1903, c. 51 | ..... | ..... | ..... | 1903, c. 51 | .03 | 1902 |
| South Dakota.. | ..... | ..... | ..... | ..... | ..... | .02½ | ..... |
| Tennessee..... | ..... | 1907, No. 690 | 1907, No. 690 | ..... | ..... | ..... | ..... |
| Texas..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Vermont..... | ..... | 1906, No. 122, 118 | 1906, No. 126, 121 | 30 | ..... | ..... | 1902 |
| Virginia..... | ..... | 1904, c. III. | 1904, c. III. | ..... | 194, c. III. | .02-.03½ | 1906 |
| Washington.... | ..... | 1907, c. 81 | 1907, c. 81 | 10 | ..... | .03 | ..... |
| Wisconsin..... | ..... | 1905, c. 362 | 1905, c. 362 | 10 | 195, c. 362 | .02† | ..... |

*Citations are as follows: c., chapter; No., number of bill; p., page, Sec., section.

†For all but small railroads.

¹Maryland, 1906, c. 472½.

²Oklahoma, 2 cents in Constitution; West Virginia, 2 cents.

³Maryland, 1906, c. 174.

⁴Oklahoma in Constitution; West Virginia, 1903, c. 23; New Hampshire, 1907, c. 79.

⁵Oklahoma, 1905, c. 10 article 2.

| | | | | | | | |
|-------|---------------|----------|--------------|-----------------------------|--|--|--------------|
| 10 | 1907, No. 312 | .02-.03 | ..... | 1907, No. 312 | 1907, No. 312 | ..... | 1907 |
| ..... | ..... | .02 | 1905, c. 221 | 1907, c. 449 | 1903, c. 320 1907, c. 23 | 1903, c. 147 1905, c. 208 1907, c. 54 | 1905 1907 |
| ..... | ..... | .02* | ..... | ..... | 1905, p. 109 1907, Sec. 1075 1907, No. 320 | 1903, Sec. 1164-5 1905, p. 107 1907, No. 438 | 1905 1907 |
| ..... | ..... | .03 | ..... | ..... | 1907 c. 37 | 1905, c. 26 1907, c. 182 | 1903 1907 |
| 10 | 1907, Sec. 8 | .02 | 1907, c. 94 | 1907, c. 93 | 1905, c. 105 | 1905, c. 108 1907, c. 8 | ..... |
| 30 | 1907, c. 44 | ..... | ..... | 1907, c. 44 | 1907, c. 44 | 1907, c. 44 | 1907 |
| ..... | ..... | ..... | ..... | ..... | 1907, c. 197 | 1907, c. 197 | 1907 |
| 30 | 1907, c. 429 | ..... | ..... | 1907, c. 429 | 1907, c. 429 | 1907, c. 429 | 1907 |
| ..... | ..... | .02½* | 1907, c. 216 | ..... | 1903, c. 342 1905, c. 545 1907, Sec. 2 | 1903, c. 126 1907, c. 210, 465 | 1903 |
| ..... | ..... | .02½* | 1907, c. 199 | ..... | 1903, c. 145 1907, c. 200 | 1903, c. 147 1907, c. 210 | 1905 1907 |
| 10 | 1906, c. 244 | .02 | ..... | 1906, c. 244 | ..... | 1906, c. 244 | ..... |
| 10 | 1907, c. 53 | ..... | ..... | 1907, c. 53 | 1907, c. 53 | 1907, c. 53 | 1905 1907 |
| ..... | ..... | .02 | ..... | ..... | ..... | ..... | ..... |
| ..... | 1903, c. 51 | .03 | 1904, c. 250 | 1905, No. 446 | ..... | 1906, c. 8, 52, 2169 1907, No. 241, 314 | 1903 |
| ..... | ..... | .02½ | ..... | 1907, c. 221 | 1907, c. 216 | 1907, c. 212, 214 | 1907 |
| ..... | ..... | ..... | ..... | ..... | ..... | 1903, c. 2160 1907, No. 690 | 1907 |
| ..... | ..... | ..... | ..... | 1905, p. 412 1907, c. 42 | 1907, c. 184 | 1905, c. 133 1907, c. 156 | 1905 |
| 30 | ..... | ..... | 1904, No. 95 | 1906, No. 122, 123 | 1906, No. 126, 122 | 1906, No. 126, 118 1906, No. 124 | 1906 |
| ..... | 194, c. III. | .02-.03½ | 1906, c. 256 | ..... | 1903, c. 260 | 1904, c. III. 1906, c. 298 | 1904 1906 |
| 10 | ..... | .03 | ..... | ..... | 1907, c. 81, 142 | 1907, c. 81 | 1907 |
| 10 | 195, c. 362 | .02† | ..... | 1905, c. 486 | 1903, c. 107, 368, 582 1905, c. 362 1907, c. 582 | 1903, c. 63 1905, c. 362 | 1903 1905 |

⁶Kentucky, 1906, c. 91; Oklahoma, 1905, c. 10, article 4.

⁷Connecticut, 1907, c. 225.

⁸New Hampshire, 1905, c. 107.

⁹Arizona, 1903, c. 48.

¹⁰New Hampshire, 1903, c. 88; Maryland, 1904, c. 620; West Virginia, 1907, c. 43; Oklahoma in Co

¹¹Connecticut, 1907, c. 242; Maryland, 1906, c. 454; West Virginia, 1907, c. 59.

| | | | | | |
|--------------------------------------|--|------------------------------|------------------------------|------------------------------|---|
| No. 312 | ..... | 1907, No. 312 | ..... | 1907, No. 312 | 1905, No. 127 1907, No. 312 |
| C. 320 C. 23 | 1903, c. 147 1905, c. 208 1907, c. 54 | 1905, c. 287 1907, c. 27 | 1907, c. 333 | ..... | 1905, c. 280 |
| D. 109 Sec. 1075 No. 320 | 1903, Sec. 1164-5 1905, p. 107 1907, No. 438 | 1905, p. 10 1907, No. 282 | 1907, No. 149 | ..... | 1905, p. 106 |
| C. 37 | 1905, c. 26 1907, c. 182 | 1903, c. 65 1907, c. 37 | 1907, c. 51 | ..... | 1903, c. 8 1907, c. 43 |
| C. 105 | 1905, c. 108 1907, c. 8 | ..... | 1905, c. 106, 107, 5 | 1905, c. 105 1907, c. 89 | ..... |
| C. 44 | 1907, c. 44 | 1907, c. 44 | ..... | 1907, c. 44 | 1907, c. 44 |
| C. 197 | 1907, c. 197 | 1907, c. 197 | ..... | ..... | 1903, c. 257 1904, c. 209 1906, c. 301 |
| C. 429 | 1907, c. 429 | 1907, c. 429 | ..... | 1907, c. 429 | 1906, c. 109 1907, c. 429, 578 |
| C. 342 C. 545 Sec. 2 | 1903, c. 126 1907, c. 210, 465 | 1903, c. 444, 693 | ..... | ..... | ..... |
| C. 145 C. 200 | 1903, c. 147 1907, c. 210 | 1905, c. 152 1907, c. 201 | 1903, c. 144 1907, c. 209 | ..... | 1903, c. 148, 301, 548 1905, c. 150 |
| ..... | 1906, c. 244 | ..... | ..... | 1906, c. 244 | 1904, p. 537 1905, c. 206, 232 1906, c. 247 1906, p. 191 |
| C. 53 | 1907, c. 53 | 1905, c. 225 1907, c. 53 | 1907, c. 53 | 1903, c. 101 1907, c. 53 | 1907, c. 53 |
| ..... | ..... | ..... | ..... | 1905, c. 480 | 1905, c. 206 |
| ..... | 1906, c. 8, 52, 2169 1907, No. 241, 314 | 1903, c. 55 | 1906, c. 65, 73 | 1905, No. 480 | ..... |
| C. 216 | 1907, c. 212, 214 | 1907, c. 212 | ..... | 1905, c. 480 | ..... |
| ..... | 1903, c. 2160 1907, No. 690 | 1907, No. 690 | ..... | 1903, c. 210 | ..... |
| C. 184 | 1905, c. 133 1907, c. 156 | 1905, c. 107 | ..... | 1903, c. 68 | ..... |
| No. 126, 122 | 1906, No. 126, 118 1906, No. 124 | 1906, No. 126, 118 | 1904, c. 96 1906, No. 120 | 1906, No. 126 | 1903, c. 69 1904, c. 93, 97 1906 No. 125, 126, 118 |
| C. 260 | 1904, c. III. 1906, c. 298 | 1904, c. IV. 1906, c. 301 | 1904, c. IV. | ..... | ..... |
| C. 81, 142 | 1907, c. 81 | 1907, c. 81 | 1907, c. 81 | ..... | ..... |
| C. 107, 368, 582 C. 362 C. 582 | 1903, c. 63 1905, c. 362 | 1903, c. 63 1905, c. 362 | | 1905, c. 386 1907, c. 386 | 1907, c. 454, 595 |

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|------------------------------|---|---------------------|---|---------------|---|
| | | | 1900, p. 207, 283 1907, c. 392 | | 1904, c. 189 1906, c. 463 1907, c. 585 |
| 1907, No. 312 | 1905, No. 127 1907, No. 312 | | 1907, No. 234, 312 | 1907, No. 312 | 1905, c. 156 |
| ..... | 1905, c. 280 | 1907, c. 253 | 1903, c. 262 1905, c. 122 1905, c. 280 1907, c. 202, 276 | ..... | 1903, c. 86 1907, c. 395 |
| ..... | 1905, p. 106 | 1905, p. 112 | 1907, No. 152 1907, No. 131 | ..... | 1903, c. 130, 129 1903, c. 126, |
| ..... | 1903, c. 8 1907, c. 43 | 1907, c. 5 | 1903, c. 101 1905, c. 24 1907, c. 37 | 1907, c. 37 | ..... |
| 1905, c. 105 1907, c. 89 | ..... | ..... | 1907, c. 90 | 1907, c. 90 | 1903, c. 28 1905, c. 40 |
| 1907, c. 44 | 1907, c. 44 | ..... | 1907, c. 44 | 1907, c. 44 | 1905, c. 93, 144, 146 |
| ..... | 1903, c. 257 1904, c. 209 1906, c. 301 | ..... | 1907, c. 197 | ..... | 1903, c. 257 1906, c. 141 |
| 1907, c. 429 | 1906, c. 109 1907, c. 429, 578 | 1907, c. 523, 627 | 1906, c. 380 1907, c. 429 | 1907, c. 429 | 1903, c. 515 1904, c. 228 1905, c. 727 1907, c. 429 |
| ..... | ..... | 1907, c. 456 | 1903, c. 552 1905, c. 335 1907 c. 330 | ..... | 1905, c. 187 1907, c. 466, 472 |
| ..... | 1903, c. 148, 301, 548 1905, c. 150 | 1907, c. 207 | 1907, c. 205 | ..... | 1907, c. 53 |
| 1906, c. 244 | 1904, p. 537 1905, c. 206, 232 1906, c. 247 1906, p. 191 | ..... | 1904, p. 615 1905, c. 244, 247 | 1906, c. 244 | 1904, p. 570 |
| 1903, c. 101 1907, c. 53 | 1907, c. 53 | ..... | 1905, c. 41 1907, c. 53 | 1907, c. 53 | ..... |
| 1905, c. 480 | 1905, c. 206 | ..... | 1903, c. 208 1907, No. 250 | 1907, No. 250 | 1903, c. 209 1903, c. 551, 14 1905, c. 184 1907, No. 250 |
| 1905, No. 480 | ..... | ..... | 1905, c. 2137 1905, c. 451, 492 | ..... | 1903, c. 68 |
| 1905, c. 480 | ..... | 1907, c. 220 | ..... | ..... | 1907, c. 217 |
| 1903, c. 210 | ..... | ..... | ..... | ..... | 1903, c. 10, 11, 115 1903, c. 199, 210 1907, c. 252, 464 |
| 1903, c. 68 | ..... | 1907, c. 5, 51, 122 | 1905, c. 56 1907, c. 32, 41 | ..... | 1903, c. 65, 99 1905, c. 109 |
| 1906, No. 126 | 1903, c. 69 1904, c. 93, 97 1906 No. 125, 126, 118 | ..... | 1904, No. 91, 93 1905, c. 151 1906, No. 126, 118 | ..... | 1906, No. 126 1906, No. 118 |
| ..... | ..... | 1907 | 1904, c. IV 1904, c. 171 | ..... | 1903, c. 270 1904, c. 11, 48 1906, c. 296 |
| ..... | ..... | ..... | 1903, c. 158 1907, c. 81 | 1907, c. 81 | ..... |
| 1905, c. 386 1907, c. 386 | 1907, c. 454, 595 | 1907, c. 655 | 1905, c. 362 1907, c. 402, 505 | 1905, c. 362 | 1903, c. 49, 370, 391 1907, c. 576 |

¹²Connecticut, 1907, c. 125, 268, 224; Oklahoma, 1903, c. 9; Rhode Island, 1905, c. 1217; Delaware, 1905, c. 68, 205-7; Arizona, 1903, c. 76, 48; Utah, 1903, c. 83; New Mexico, 1905, c. 41, 52; Kentucky, 1906, c. 62.

(This does not include Public Safety Laws regulating Grade Crossings and Hours of Labor).

¹³Louisiana, 1904, Sec. 2; 1904, c. 24; Delaware, 1905, c. 151; Mississippi, 1906, c. 135; New Hampshire, 1907, c. 100.

¹⁴Connecticut, 1905, c. 149, 104, 126; 1907, c. 124, 223, 246; Utah, 1903, c. 108; 1905, c. 4, 29; Arizona, 1905, c. 42, 149; West Virginia, 1905, c. 41; Maryland, 1906, c. 717; New Hampshire, 1903, c. 32, 102; Kentucky, 1906, c. 91; Louisiana, 1906, c. 186; Idaho, 1905, p. 154.

Before the Wisconsin two-cent fare law was enacted, the railway commission made a careful examination of the passenger fares of the state, and declared itself in favor of a maximum no lower than two and one-half cents per mile, but the legislature disregarded the expert opinion of the commission and fixed an arbitrary maximum at two cents for all railways with receipts of \$3,500 or over per mile. In this the railways of Wisconsin acquiesced, but in other states, notably Pennsylvania, Alabama, Mississippi, Nebraska and North Carolina, the railways appealed to the courts.

The acts of Pennsylvania and North Carolina have already been finally declared to be unconstitutional. Whether or not the remaining maximum fare laws will likewise be overthrown, the wisdom of fixing fares by a sweeping and inflexible statute instead of through an expert commission is at least questionable.

In addition to the statutes fixing maximum fares, nine states passed laws relative to *passenger mileage books*.³⁸ The usual provisions are that mileage books of specified amounts must be sold; that they are to be transferable; and that the rate is not to exceed a specified maximum per mile.

The number of statutes³⁹ enacted during the last five years, fixing maximum *freight rates*, is insignificant in comparison with those fixing maximum fares. Nine states, however, adopted such laws. The Alabama rate law of 1907, after dividing railways into four classes, divides the bulk of intra-state traffic into twenty-two classes. It then prescribes a maximum rate for each class, above which neither the railway commission nor the railway may fix an actual rate. Separate maximum schedules are, also, prescribed for cottonseed oil, oil cake, cottonseed, ashes, and fertilizers. Minnesota in the same year enacted the well known freight rate act, recently declared unconstitutional by the United States Supreme Court.^{39a} Many of the chief commodities which had previously paid commodity rates were by statute placed within the Minnesota classification, and each class was given a maximum rate. Practically all agricultural products, lumber and live stock, the highly important factors of Minnesota freight, were in this way divided into statutory classes and deprived of commodity rates.

In Nevada the identical rate law which creates the rate-making

³⁸See Table II.

³⁹See Table II.

^{39a}See Table II.

commission fixes a complete maximum schedule of rates for both classified and unclassified traffic, and adopts the western classification. A Nebraska statute of 1907, prescribes maximum rates for live stock, potatoes, grain and grain products, fruit, coal, lumber and building material in carload lots. A Kansas rate law of 1905 prescribed schedules for oil, gasoline, fuel oil and petroleum, and two years later similar schedules were fixed for cereals and cereal products. In 1905 the Missouri legislature fixed maximum rates for six classes of freight in car-load lots, as well as for stone, crushed rock, sand and brick in car-load lots; and in 1907, it raised all these maximum rates and prescribed maximum rates and car-load weights for fruit. Similar, though less comprehensive, rate statutes were enacted in North Carolina, South Carolina, Maryland and North Dakota.

(4) *Statutes Regulating the Service of Common Carriers.*—The car shortage during the years 1905, 1906 and part of 1907, and the frequent complaint that cars were not fairly distributed resulted in an unusually large number of statutes designed to regulate *car service*. Twenty-five states enacted car service laws, and in twenty of them,—Alabama, Colorado, Indiana, Kansas, Minnesota, Missouri, Arkansas, Georgia, Louisiana, Mississippi, North Dakota, South Carolina, Virginia, Oklahoma, Oregon, North Carolina, South Dakota, Texas, Vermont and Washington,—they provided for reciprocal demurrage. As is indicated in the following table (Table III) the provisions of the reciprocal demurrage laws show little uniformity other than that the shipper is usually obliged to unload or load his cars within a period of forty-eight or seventy-two hours or pay a demurrage of from one to five dollars per car for each day of delay. On the side of the carrier the number of cars, the time limit, the demurrage charges, the number of miles per day which the cars must move and the time allowed for delivery are usually specified, but without uniformity in the different states. The demurrage in the more recent statutes seldom exceeds five dollars per car per day. The Texas law, which provided for a penalty of twenty-five dollars if ten cars were not furnished within six days or fifty in ten days, was declared unconstitutional,⁴⁰ as a burden upon interstate commerce and beyond the police power of the state.

The remainder of the car service statutes usually provide that

⁴⁰Houston and Texas Central Railway *vs.* Mayes, 2014, S. 321.

TABLE III.—RECIPROCAL DEMURRAGE ACTS (1903-1907).

| STATE. | SHIPPERS' DEMURRAGE. | | CARRIERS' DEMURRAGE. | | | | | |
|----------------------------|---|-----------------------------|-----------------------------|---------------------------------|-----------------------------|--|--------------------------------------|--|
| | Free time. | Penalty, per car per day. | Number of cars. | Free time. | Penalty, per car per day. | Miles per day. | Delivery at destination. | Penalty, per car per day. |
| Alabama..... | 48-72 hours | \$1.00; total not over \$10 | 3 4-9 10-25 | 2 days 5 10 | \$1.00; total not over \$10 | 50 | 24 hours | \$1.00 |
| Arkansas..... | 48 hours | \$5.00 | ..... | 6 days | \$5.00 | 50 | 24 hours | \$5.00 |
| Colorado..... | 48 hours | \$1.00 | ..... | 3 days | \$1.00 | Reasonable | Reasonable | Damage |
| Georgia..... | 48 hours | \$1.00 | ..... | 4 days | \$1.00 | 50 | 48 hours | \$1.00 |
| Indiana ¹..... | ..... | ..... | ..... | 48 hours | \$1.00 \$2.00 (coal) | 50 | 24 hours | \$5.00 |
| Kansas..... | 48-72 hours | \$5.00 | 1-9 10-29 30+ | 3 days 6 10 | \$5.00 | 50 | 24 hours | \$5.00 |
| Louisiana..... | Additional time on coal, coke, watermelons, perishable meats and export goods | ..... | ..... | 10 days | \$1.00 | ..... | Reasonable | ..... |
| Minnesota..... | 48-72 hours | \$1.00 | 1-3 4+ | 48-72 hours 1 day additional | \$1.00 | 50 | 24 hours | \$1.00 |
| Missouri..... | 48-72 hours | ..... | ..... | 4 days | \$1.00 | 60 | 12-24 hours | \$1.00 |
| Mississippi..... | ..... | ..... | ..... | 5 days | \$1.00 | ..... | No delay by switching to side tracks | \$1.00 |
| North Carolina..... | ..... | ..... | ..... | 4 days | \$1.00 | 50 m.—3 days; 24 hours each additional 25 m. | 48 hours | \$25 1st day, \$5 thereafter; 1/2 for L. C. L. |
| North Dakota..... | ..... | ..... | 2 | 72 hours | \$2.00 | ..... | 60 hours | Refusal to accept |
| Oregon..... | 48 hours | \$2.00 | 1-5 6-10 11-29 30+ | 5 days 10 15 20 | \$2.00 | Reasonable | Reasonable | \$2.00 |
| Oklahoma..... | ..... | \$1.00 | ..... | ..... | \$1.00 | 60 | ..... | \$1.00 |
| South Carolina..... | 72 hours | ..... | ..... | 3-4 | \$1.00 | ..... | 48 hours | \$1.00 |
| South Dakota..... | Must begin loading in 48 hours | \$5.00 | 1-9 10+ | 72 hours 6 days | \$1.00 | 50 | ..... | \$1.00 |
| Texas ² | 48-72 hours | \$25.00 | 1-10 50+ | 3 days 10 | \$25.00 | Reasonable | Reasonable | ..... |
| Vermont ³..... | ..... | ..... | ..... | 4 days | \$1000 and damages | ..... | ..... | ..... |
| Virginia..... | ..... | ..... | ..... | 4 days | \$1.00 | 50 | 24 | \$1.00 |
| Washington..... | 48 hours | \$1.00 | 10 | 6 days | \$1.00 | 50 | 24 | \$1.00 |

¹ Penalty not imposed if there was reasonable effort.² Unconstitutional. Act of 1907 calls for reasonable car service.³ Penalty not imposed if failure is due to car shortage.

there shall be a "reasonable and fair distribution" of cars between applicants. As was previously noted, moreover, in the fifteen states creating new commissions, as well as in Virginia and North Carolina, the supervision of car distribution was placed in the hands of the railway commissions.

A second field of service regulation is that of *stations and terminals*. Twenty-seven separate states enacted statutes, the usual provision of which was that adequate stations must be built when population or traffic has attained specified amounts, and that they must be suited to the convenience of the public. It is frequently stipulated that passenger stations must be open at specified times, that they must have public telephone service, must be adequately heated and lighted, and have adequate toilet facilities.

Twenty-three states enacted laws regulating *train service and connections*. These statutes generally stipulate that through connections shall be provided and that a reasonable number of trains shall be available at all stations. In Mississippi, Texas, North Dakota, Wisconsin, Minnesota, South Carolina, Montana and Indiana it was provided that railways shall furnish bulletins announcing the arrival and departure of passenger trains.

In fifteen states, during the last five years, the *live-stock service* was the object of legislation. The usual provisions in the laws are that cattle shall be unloaded for food and rest at the end of a given number of hours, that stock cars shall be moved at the rate of say eighteen miles per hour⁴¹ on the main line and twelve miles per hour on branch lines, and that free transportation and caboose facilities shall be provided for the attendants of live stock. The Alabama law stipulates that, in the distribution of cars, live stock shall receive preference; the Montana law declares it to be a misdemeanor for a carrier to permit cattle to be shipped without inspection; in several states new statutes were enacted relative to fences⁴² and cattle guards; and in South Carolina carriers are required to furnish telegraphic information as to the movement of stock cars.

Twenty-one states regulated the construction and use of *industrial tracks* and spurs. In nine of the states creating new commissions, as well as in Maine, Texas and Kansas, control over such

⁴¹Nebraska, 1905, C. 107.

⁴²Arizona, Montana, Florida, Oklahoma, Utah, Washington, South Dakota.

tracks is vested in the commissions; a California law of 1905 required the consent of the local legislative authorities before private tracks could be constructed; and in various states⁴³ carriers were obliged to construct branch lines to a distance of from one-quarter to one-half mile from the main line unless lack of necessity could be demonstrated to the railway commission.

Lastly, twenty-one states enacted statutes concerning the service of *express companies*. In sixteen⁴⁴ of these the express service was by statute placed within the jurisdiction of their railroad commissions. The Arkansas and Florida legislatures enacted laws regulating the payment of damages by express companies; and a Nebraska statute of 1907 fixed the maximum express rates at seventy-five per cent of what they were on January first of that year.

(5) *Corporate Affairs*.—As many as thirty-six states and territories enacted statutes regulating the general corporate affairs of common carriers. Corporate powers, however, were so well defined by older laws, that few of those passed during the last five years are of special importance; but few common tendencies, moreover, are discernible. Various statutes⁴⁵ provide that electricity may be substituted for steam without obtaining a new charter; others stipulate how securities may be issued, those of Arizona, Mississippi, New York and New Hampshire being aimed directly at the issue of watered stocks and bonds. The Wisconsin statute of 1907 prohibits the issue of stock below par or of bonds at less than seventy-five per cent of their par value, and provides that dividends may be paid only on shares fully paid for and only out of net profits. Still others of these corporate statutes permit the purchase of steamboats and barges by railways.⁴⁶ The majority, however, make minor changes in the laws defining the corporate powers of common carriers.

(6) *Public Safety*.—The rapid increase in railway accidents during the last half decade was a matter of special concern to the state legislatures, and as a result statutes designed to promote

⁴³Kansas, 1905, C. 350; South Carolina, 1905, C. 480; Mississippi, 1905, C. 386; Indiana, 1907; Nebraska, 1907, C. 89.

⁴⁴New Hampshire, Massachusetts, Vermont, Alabama, Pennsylvania, Oregon, New York, Nevada, Nebraska, Montana, Michigan, Colorado, Ohio, Mississippi, Washington and Indiana.

⁴⁵California, 1905, C. 423; Nebraska, 1905, C. 40; Maryland, 1906, C. 717; Tennessee, 1903, C. 115; New Hampshire, 1903, C. 102.

⁴⁶Michigan, 1905, C. 156; Massachusetts, 1904, C. 169.

public safety were enacted in thirty-five states and territories. Of special frequency were the laws regulating the location and operation of *grade crossings*, such statutes being enacted in twenty-six states.⁴⁷ Some place the control of grade crossings directly in the hands of the commission; some provide for specified safety devices at grade crossings; some limit the maximum percentage of the grade; and others limit the speed of the trains. In various states⁴⁸ laws were enacted dealing directly with accidents by requiring that all accidents be immediately reported to the state commission, whose duty it is to investigate whenever necessary.

In seventeen states⁴⁹ and territories statutes designed largely to protect the public took the novel form of prescribing a limit to the *number of hours* of continuous labor permissible on the part of trainmen and telegraphers. The most frequent limit is sixteen hours; but in Texas, Connecticut, Missouri, New York, Wisconsin and West Virginia it is fixed at eight hours for telegraphers; and in Texas at fourteen hours for trainmen. The basis upon which these laws rest is the belief that if men who are directly concerned with the movement of trains work continuously for more than say sixteen hours they are liable unknowingly to make errors which may result in vital danger to the traveling public.

Aside from these general groups of public safety statutes, many miscellaneous provisions were enacted. Various states⁵⁰ provided for the most extreme penalties against attempts to derail trains. Some⁵¹ enacted laws requiring power brakes for locomotives and a given percentage of the cars in a train, usually seventy-five per cent; others⁵² required the adoption of automatic couplers and grab irons. Various states⁵³ fixed heavy penalties against tampering with switches and signals; some⁵⁴ prohibited the

⁴⁷Vermont, Montana, North Dakota, Kansas, Indiana, Florida, New Hampshire, Ohio, Maryland, New Jersey, Michigan, Missouri, California, Massachusetts, Pennsylvania, Maine, Arkansas, New York, Illinois, Minnesota, Oregon, Alabama, West Virginia, Oklahoma, Nevada and Wisconsin.

⁴⁸South Carolina, Minnesota, Colorado, Michigan, Montana, Nevada, New York, Pennsylvania, Massachusetts, New Hampshire and Illinois.

⁴⁹Kansas, Missouri, Maryland, Arkansas, Iowa, North Dakota, Wisconsin, Indiana, Minnesota, South Dakota, Texas, Virginia, Connecticut, Montana, New York, North Carolina and West Virginia.

⁵⁰California, Delaware, Georgia, New Mexico, Oregon, Montana, North Carolina, Rhode Island, South Carolina and Vermont.

⁵¹Indiana, Ohio, Illinois and Missouri.

⁵²Indiana, Ohio, Illinois, Missouri, Minnesota and Michigan.

⁵³Virginia, Colorado and Maine.

⁵⁴California, North Carolina and Vermont.

employment of men addicted to the use of liquor; others made special provision that a full train crew⁵⁵ is at all times to be in charge of a train. A Nebraska statute fixes the minimum age of a night telegraph operator at twenty-one years, and a similar law in Wisconsin provides that a telegrapher must be at least eighteen years of age and have had eighteen months of instruction under an experienced operator. An Alabama law stipulates that employees engaged in train movements must be able to distinguish objects, colors and sounds. The remaining statutes cited in Table II hardly call for special mention; they further illustrate the great variety of provisions enacted by the various state legislatures to protect the public and employees from bodily injury.

General Survey of the Period

The last five years as an aggregate have been a period of almost frenzied railway legislation, and it is not surprising that both wise and unwise statutes were, in the heat of public agitation, enacted by the state legislatures. The sanest legislation and that which is best withstanding the present reaction in public and court opinion, is doubtless that which placed the supervision of railroads into the hands of railroad commissions as distinct from direct control by sweeping and inflexible statutes. Whatever general tendencies have been developed in this commission legislation has likewise been sane and conservative.

The marked tendency to confer upon the commissions the power to fix rates, joint rates and classifications is but a recognition of the fact that in few states other than Massachusetts have commissions with merely advisory powers been able to cope with the rate situation. There is nothing inherently wrong in the rate-making power if it is of the conservative type, and as was previously noted eight of the thirteen newly created mandatory commissions are instructed to revise individual rates upon complaint and after hearings have been held, as contrasted with the drastic power of making rate schedules.

The tendency to vest the commissions with wide administrative powers over the service of railways cannot but lead to better results than the rigid control of service by statute. The promotion of public safety through commissions; their supervision over stock and bond issues; and their power to investigate the finances of railways

⁵⁵Indiana, Mississippi, Texas, Arkansas, Kansas and South Dakota.

leads to a far more conservative and elastic control than could be secured by rigid, prohibitory statutes. Even the power to promulgate uniform accounts is less drastic than it appears, for almost invariably the commission co-operates with the railway accountants. The judicial power to call witnesses, to have access to books and papers, and to take sworn testimony is a vital auxiliary to state railroad regulation, for in no other way can either a commission or a court arrive at an intelligent conclusion in the issue of an order.

The tendency to increase the membership from a single commissioner to a commission of three or of ten, as in New York and five in Georgia; the increased salaries of the commissioners; longer tenure of office; the more frequent practice of having them appointed rather than elected as political office holders; and the provision for the hiring of experts,—all lead to a better personnel in the commissions and a better understanding of the delicate matters which come before them.

A final tendency in commission legislation is the establishment of public utilities commissions. If railways are to be subjected to state control because of their quasi-public nature, then there is little reason why they should be singled out from other public utilities. As was previously indicated, there is an almost universal movement to extend the scope of the commission to express, sleeping car and private car companies, industrial railways, terminals and inter-urban street railways. In some it is extended to include telegraph and telephone companies, navigation companies and street railways within cities and towns. In others it is extended to nearly all public utilities. North Carolina and Virginia have "Corporation Commissions," New York and Wisconsin have Public Utilities Commissions, and the Georgia Railroad Commission has jurisdiction over a large number of public service corporations.

But the legislation of the last five years has also its anomalies. It would seem that when a state entrusts the regulation of rates, fares and service to its commission, the policy of regulating these matters directly by statute would decline. But the mere bulk of statutes above enumerated is striking evidence that statutory control has increased enormously. Not all such laws are contradictory to the principle of mandatory commissions. As was previously explained, many of the statutory provisions were enacted so as to make the work of the commissions more effective, neither is there any-

thing unusual in many of the laws concerning public safety, the corporate affairs of the railroads and other matters which are much alike in all parts of a state, and may be regulated by a blanket statute without special hardship to particular railways.

It is the statutory fixing of rates and fares that has caused the greatest complaint, and it is these that now bear the brunt of adverse court decisions. It is notable that as long ago as 1890 there were twenty-two maximum rates and fares statutes, and that during the next twelve years⁵⁶ the number was increased by but four. During the last five years, however, twenty-two states enacted maximum fare laws and nine states established maximum rate schedules by statute. With few exceptions these states also have commissions to whom they have given the power to make rates and fares.

Only slightly less inexplicable is the statutory control of the railway service. In numerous instances, the self-same states that vested their commissions with the power to supervise the service of the carriers, enacted reciprocal demurrage laws to solve the car service problem, and passed rigid statutes as to the location and construction of terminals, the running of trains, the making of connections and the building of private tracks and spurs. There were grounds for state control of the railway service, but it is questionable whether it should be in the form of statutes enacted by legislatures, or by orders issued by expert commissions.

It is not surprising that of the great number of railway statutes recently enacted some should be contested by the carriers, and this, together with their depleted earnings as a result of the industrial depression, has caused a sudden halt in the activity of the state legislatures. It is of special significance that thus far the successful attack of the railways has been against the regulative statutes and not against the commissions. In Washington, alone, has the court denied to the commission the power to fix maximum rates, because of a special provision in the state constitution reserving that power to the legislature, and this decision is not final, for it has been appealed to the Supreme Court of the United States. On the other hand, the Indiana commission law has been declared to be constitutional; the power of the South Dakota⁵⁷ railway commission over express companies, and of the North Carolina⁵⁸ corporation com-

⁵⁶I. C. C., *Railways in the United States in 1902*, Part IV, p. 28.

⁵⁷*Platt vs. Le Cocq*, 150, 391.

⁵⁸*A. C. L. R. Co. vs. N. C. Corp. Com.*, 27 S. C. Rep. 285.

mission to require through connections has been recognized in court.

Rate orders of various commissions have been temporarily enjoined and are now in court for final decision,—as in Kansas, Missouri, Virginia, Alabama and South Dakota, and a western railway has prepared to test the validity of the Nebraska commission, but there is as yet no indication that the courts will reverse the decisions which they made at the time of the Granger commissions.

It is in the field of direct statutory regulation that there are numerous provisions unable to weather a constitutional test. On March 23, 1908, the United States Supreme Court, in a double case, declared unconstitutional the freight rate act of Minnesota and the passenger fare act of North Carolina because the penalty was so severe as to prevent a carrier from testing their validity, and because the court regarded their enforcement as confiscatory. The two great principles that the enjoining of a state officer is not suing the state, and that a federal court may test the validity of a state rate act were established.

In Pennsylvania the State Supreme Court declared the two-cent fare act unconstitutional on grounds of confiscation; and in Alabama the Federal Circuit Court⁵⁹ on the same grounds enjoined the two and a quarter cent fare law and the freight rate act fixing maximum rates on 110 commodities. Preparation has been made to attack the two-cent fare laws of Missouri, Illinois and Nebraska and the freight rate act of Missouri, upon the ground that the penalties they impose come within the federal ruling made against the Minnesota and North Carolina rate acts.

Various statutes other than those fixing rates and fares have, likewise, been declared unconstitutional. The Alabama, Arkansas and Missouri statutes which prohibited foreign carriers from appealing cases to a federal court upon penalty of forfeiting their right to operate within the state were overthrown as infringing upon the rights of persons to sue in federal courts, guaranteed both by the state and federal constitution, and upon the grounds that the jurisdiction of federal courts is fixed by the federal constitution and may not be limited by legislatures.⁶⁰ The Supreme Court of Missouri

⁵⁹*Seaboard Air Line Railway Co. et al. vs. R. R. Com. of Alabama et al.*, 155 Fed. Rep. 792.

⁶⁰*Chl., R. I. & P. Ry. Co. vs. Ludwig*, 156 Fed. 152; *Seaboard Air Line Ry. Co. vs. R. R. Com. of Alabama*, 155 Fed. 792.

has declared unconstitutional the law requiring free transportation for shippers of live stock, as discriminating against other shippers and in violation of the fourteenth amendment. The reciprocal demurrage law of Texas was overthrown and that of Minnesota is now being tested by the Great Northern Railroad. The laws limiting the hours of telegraphers and trainmen have been upheld by the Supreme Court of Montana and a state circuit court in Wisconsin, but have not as yet been finally ruled upon by a federal court.